GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Kullappa Spinning Mills, Chitradurga.

Award of the Labour Court, Hubli—published.

Read the following papers :

(1) Letter No. 814/68-69, dated 13th December 1968 from Shri D. Ponnurangam, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI.

Reference ID (LCH) Claim No. 38/1968

Presiding Officer : Sri D. Ponnurangam, B.A., B.L.

Dated 3rd December 1968

Claimant—

The Workmen of Kullappa Spinning Mills, represented by The Secretary, Kullappa Spinning Mills, Labour Association, Chitradurga.

Vs.

Respondent—

The Management of Kullappa Spinning Mills, Chitradurga.

The Government of Mysore in its order of reference No. FCL 960 LLD 67, dated 2nd May 1968, referred for adjudication to this Court, the dispute between the workmen and the management of Kullappa Spinning Mills, Chitradurga, mentioning the following points of dispute, *viz.*:

> "Is the management of Kullappa Spinning Mills, Chitradurga, justified in terminating the services of sixteen workers whose details are mentioned in the schedule annexed hereto ? If not, are they entitled to be reinstated with back wages and continuity of service or to any other relief ?"

2. The facts of this dispute, briefly stated are as follows:

The 16 persons, whose names are mentioned in the schedule to this adjudication are workmen under the respondent mill. According to the claimants' union, the management has been involved in the unfair labour practice and victimising the workmen, right from the date on which the workers union came into existence for the reason that the management does not like the very existence of the union. That the management has terminated the services of the 16 scheduled workmen, as they have been the active participants in the activities of the claimants' union. That the management has time and again, called upon these workers and induced them to resign from the membership of the claimant union, but the workers did not yield to the pressure of the management and they continued their activities of the union. On account of that fact, the management has victimised these 16 workers by terminating their services, hence, for the reasons stated in the statement of demands the union prays for the reinstatement of these workers with full back wages and continuity of service along with the enhanced dearness allowance from 1st January 1967.

3. According to the respondent management, it denies the various allegations levelled against the management by the union in the Statement of demands, that the management has accepted the union as the representative body of workmen and it had welcomed various statements and had always striven for industrial peace. That the management is not aware of the union's affiliations or activities of the workers, nor did it at any time induce or persuade its workers to resign from the union and that there was no intention of the management to victimise the workers of any of their legitimate rights. That for the reasons enumerated in the rejoinder, the non-employment of these workers in question were brought about by the conduct of these workers themselves or was the direct consequence of their act or omissions. Such being the case, no relief could be ordered. In short, the management has prayed for the total rejection of all the claims of these workmen with costs.

4. After the receipts of the order of reference by this Court, the union had filed its statement of demands on 15th June 1968, the management had filed its rejoinder on 2nd July 1968. The union was represented by Sri C. Abdul Rahim, the learned representative while the respondent was represented by B. Thangaswamy, its representative.

5. On 30th October 1968 Sri C. Abdul Rahim stated on behalf of the claimant union that out of the claimants of 16 scheduled workmen, he did not press the claims of 2 workers, *viz.*, Nagaraj

(Sl. No. 6) and P. M. Mahadevappa (Sl. No. 7) mentioned in the list given by the Government of Mysore in the scheduled annexed to the order of reference, and he had filed a memo to that effect. As desired by him, I have rejected the claims of Nagaraj and P. M. Mahadevappa on that day.

6. On 18th November 1968, Sri B. Thangaswamy, the r presentative of the Mill, stated on behalf of the management that the workman Sri Rajappa (Sl. No. 12) in the schedule list of the Government in its Order of reference, stated that the workman Rajappa had amicably settled his differences with the respondent mill and that the said Rajappa had been reinstated in the respondent mill about three months prior to 18th November 1968 without back wages and he had filed a memo to that effect. He had also filed another letter in Kannada stated to have been written by that workman Rajappa. As per the statement of the management, workman Rajappa (Sl. No. 12) has been reinstated in the service of the respondent mill. I have allowed the claim of the said Rajappa in so far as it related to his reinstatement without back-wages. On that day, the union had no say in the matter and the workman Rajappa himself was absent when called. The representative on behalf of the union was also absent. Hence, I have ordered his claim only in part to the extent it related to his reinstatement without back-wages.

7. In support of the contentions of the Union regarding the other 13 workers, the union has examined 8 witnesses on its behalf and Exhibits W-1 to W-20 and Exhibits M-1 to M-25 were marked and the evidence for the union was closed. One witness on behalf of the management was examined and Exhibits M-26 to M-53 were marked and then the evidence of the respondent was closed. On 18th November 1968, the respondent was represented by Sri B. Thangaswamy. Out of the 13 workmen two workmen, *viz.*, L. R. Prakash Sl. No. 2 and Mohammed Ameer, Sl. No. 16 in the said list were present and the representative of the respondent was absent. I have given an opportunity to the two workers above-named to cross-examine the management witnesses and they had cross-examined him. I have heard the arguments on behalf of the management and also of the aforesaid two workmen. I could not hear the arguments on behalf of the union as there was no representative present to argue the case and no reason was given why the representatives of the other workers were absent on that day. I have carefully perused the records of the case.

8. Out of the 16 workers mentioned above, the claims of Nagaraj, P. M. Mahadevappa were not pressed by the union of the workers Rajappa has been reinstated. Therefore, I do not propose

to consider their claims. Out of the remaining 13 workers, the dispute of the workers A. Wazeer (Sl. No. 1) and Sri Devaraj (Sl. No. 10) can be taken together as common questions of law and similar questions of fact are involved in respect of their claims. Therefore, I propose to consider the claims of these two workmen together.

9. *A. Wazeer (Trainee) (Sl. No. 1 in the Schedule)*.—In the statement of demands, the union states that when Wazeer after having served for a period of 2 years went to the management, and requested the management to issue him temporary ticket, the management refused to give him the required ticket and it also refused work to him on 8th February 1967 without prior notice and enquiry and hence, the refusal of the management is illegal and unjustified. It prays for the re instatement with back wages with D.A. In the rejoinder it is stated that this worker was working as a Trainee and that he had joined services of the mills making false allegation that his age was 18 years and that under the provisions of the Factories Act, a worker should be at least 18 years old; that some of the workers, whose ages were doubtful were directed by the management to produce proof of their ages and Vazeer was such one of the workers so directed. He did not produce any certificate, nor did he come to work thereafter, and that therefore, his name was removed from the muster-roll.

10. This worker Vazeer has been examined on behalf of the Union as W.W. 1. He has deposed that when he joined the services of the Mill, he was not asked about his age; that he was removed from service about two years ago; that he demanded a temporary card from the management and the manager told him that he should continue to work in that Mill if he was willing to work on daily wages on Rs. 1.50, and thereafter, the manager told him that he had no work. While giving evidence before me on 30th August 1968, Vazeer has given his age as 19 years and in his cross-examination he has stated that he might have joined the services with the respondent mill in about the year 1963 and that he might have been of 12 years of age then. Exhibit W-3, dated 20th June 1966 is the list of workers of this mill furnished by the union in which the names of the workers of the mill have been mentioned against whose name their respective ages are furnished. In that list, Exhibit W-3, the name of A. Wazeer is shown as 14 years at Sl. No. 35 of Exhibit W-3 as on 20th June 1966. This worker has deposed that he joined services with the respondent in 1963. Taking that evidence of his, it is apparent that when he joined the services of the mill he was admittedly a child.

11. Under section 2(c) of the Factories Act, 1948 'a child' means a person who has not completed his 15th year of age; and

under section 2(d) of that Act, 'young person' means a person, who is either a child or an adolescent. Under section 67 of the same Act, no child who has not completed his 14th year shall be required or allowed to work in any factory. Section 68 of that Act provides that a child, who has completed the 14th year or an adolescent shall not be required or allowed to work in any factory unless a certificate of fitness granted with reference to him under section 69 of that Act, is in the custody of the manager of the factory and such a certificate may be in the prescribed form.

12. In the present dispute, according to the admission of Wazeer, he was 12 years when he joined the services in the mill in 1963. Therefore, he was a child and apparently he has not produced any medical certificate, even if it was assumed that he was 14 years, as provided under sections 67 and 69 of the Factories Act. In Exhibit M-53, which is a letter issued by the Inspector of Factories, a warning has been given to the management by the Labour Officer. In Exhibit M-53 it is stated as follows:

> "With reference to the above, Sri O. V. Krishnaswamy Chettiar, managing partner and occupier and Sri O. Gopalan, L.T.M. Manager, Kullappa Spinning Mills, Chitradurga, are hereby warned for infringement of Sections 61(1) and 67 of the Factories Act of 1948; by them during the visit of Chief Inspector of Factories and Boilers in Mysore, Bangalore, to their factory on 1st September 1966."

From the above letter, it is apparent that the management has been warned by the concerned office for the infringement of having employed children. The furnishing of the list of ages of workers in Exhibit W-3 by the union to the management is a very strong circumstance to show that the management wanted the certificates of age of Wazeer and other workers of that mill and that it was in pursuance of that direction Exhibit W-3 came into picture. On a perusal of Exhibit W-3, it will be seen that it is not in compliance with Sections 67 and 69 of the Factories Act. It has been signed by an office bearer of the I Party union. But under the Factories Act a medical certificate of age and fitness should be signed by a medical surgeon and should have been produced to the management at the time of the employment. Admittedly, he was appointed in 1953 and Exhibit W-3 is of 1966. The allegation of the management is that Wazeer and other persons were directed to produce proof of age and that Wazeer did not produce any certificate, nor did he come for work. This allegation of the mill gains support from the letter Exhibit W-2, the letter of the management in which it is stated that Wazeer absented himself from duty from 11th July 1966 to 25th January 1967 and since he is a trainee,

no notice is required as per the provisions of the Mills Standing Orders to enable him of the removal of his name from his trainee's attendance register. On a perusal of the records, I am satisfied that Wazeer has not been victimised, as alleged by him, but he was removed by the Mill on his omission to produce the proof of age as directed by the management and by his unauthorised absence. Hence, I hold that the removal of the Trainee Wazeer from service is justified and he is not entitled to either reinstatement or any other relief.

13. *Devaraj (Token No.* 103) *(Sl. No.* 10 *of the Government scheduled list)*.—From Exhibit W-3 mentioned above, the worker Devaraj has been shown as more than 14 years as per Sl. No. 6 mentioned in Exhibit W-3. So, he was admittedly, a child under the Factories Act. According to the I Party Union, Devaraj joined the services of the Mill in about 1964 (refer rejoinder at page 7). He has not produced any medical certificate regarding his age. It is not the case of the union that such a certificate was produced before the management. The allegation of the mill that Devaraj was directed to produce proof of his age appears to be true and probable. Further Devaraj has not chosen to examine himself. A feeble attempt has been made by the union to examine the aforesaid Wazeer to speak about Devaraj's claim. The evidence of Wazeer when he spoke about Devaraj's claim will show that he has not given any useful evidence in support of Devaraj. I am satisfied that the removal of Devaraj by the mill is justified and I hold that he is not entitled to reinstatement or any other relief.

14. *Worker Jayappa (Sl. No.* 9 *in the Government Scheduled list) and R. Rajappa (Sl. No.* 15 *of the list)*.—The dispute of these two workers can conveniently be taken together as the defence is the same.

15. In the statement of demands, the union has stated that the worker Jayappa presented himself at the premises of the II Party mill with the intention to work, but the work was refused and his services were terminated by the mill. He demanded his reinstatement with back wages and D.A. and continuity of service. As regards the worker Rajappa, the I Party union has not made any statement in the statement of demands.

16. In the rejoinder, the mill alleges that there was no worker by the name of 'Jayappa' and the management is not in a position to say anything on the allegation made by the union regarding Jayappa. The management also alleges in the rejoinder that there is no worker by name R. Rajappa with Token No. 16 in the Carding Department. The I Party union has not rebutted that allegation

by adducing rebuttal evidence. It has neither satisfactorily disproved the averments of the management. Hence, I hold that the claims of these workmen have not been proved. Hence, they are not entitled to reinstatement or any other relief.

17. I will now proceed to consider the claim of other workmen in this dispute.

18. *L. R. Prakash (Sl. No. 2 of the Government scheduled list)*.—In the statement of demands, it is alleged that Prakash applied for leave from 8th December 1966 for 4 days and on the presentation of the leave application, this worker was permitted to avail himself of the leave. After that period, when the worker presented himself at the premises of the mill on 12th December 1966, he was not allowed inside the mill. That subsequently, the management sent a letter on 16th December 1966 in which it is stated that he was dismissed from service. Therefore, the union claims his reinstatement with all the benefits, etc. In the rejoinder, the management alleges that this worker was continuously absent from 8th December 1966 and that his name, therefore, was removed from the register deeming that he had resigned from service; that a notice was sent to him on 16th December 1966 intimating him that his name had been removed from the register; that the non-employment of the worker is automatic by reason of his absence. The management prays for the rejection of his claim.

19. This worker examined himself as W.W. 2. From his evidence there is no convincing material to show that he was granted 4 days leave from 8th December 1966 as alleged by him.

20. One Raju, the Time-Keeper of the II Party mill has been examined as the only witness on behalf of the management. He has given evidence about the attendance register marked Exhibit M-26 and the entries in that book for the month of December, 1966 are marked as Exhibit M-26 (*a*) at page 122 of that book. The relevant entries of the worker L. R. Prakash has been marked Exhibit M-26(*a*) (1) which shows that he was absent from 8th December 1966 to 24th December 1966. The attendance register Exhibit 26 relates to the period from May, 1965 to January 1967. It appears to have been kept during the regular course of business. It shows that Prakash was continuously absent during the aforesaid period and his absence is denoted by the letter 'A' in that relevant entry of Exhibit M-26(*a*) (1). Further, in the notice Exhibit W-6, dated 16th December 1966 issued by the management to Prakash,

it is stated that his worker absented himself from work without permission till 16th December 1966 and it is stated in Exhibit W-6 that as per the Standing Orders of this Mills, *viz.*, Standing Order 8(*f*) of this Mill it was considered that he had resigned his appointment and that his name had been removed from the muster-roll. Copy of the Standing Order of the mill has been produced and marked by the management as Exhibit M-52. Standing Order 8(*f*) of the Standing Orders runs as hereunder :—

> "If any workman remains absent without leave for more than 7 consecutive days, he shall be deemed to have resigned his appointment and shall cease to be a workman."

21. At the time Exhibit M. W-6, dated 16th December 1966 was issued Prakesh was continuously absent for 9 days and therefore, his case falls within the mischief of the Standing Order 8(*f*) quoted above and hence, he shall be deemed to have resigned his post by virtue of that Standing Order. I am satisfied that he was absent. I am unable to accept the contention made on behalf of the union in the statement of demands that he was victimised. I hold that the action of the management in removing his name from the register is justified as per the Standing Order. I find no reason to interfere with the decision of the mill. I hold that the worker Prakash is not entitled to reinstatement, nor for any other relief.

22. *Nanjappa* (*T. No.* 17) (*Sl. No.* 3 *in the Government Scheduled list*).—The allegation of the union in its statement of demands is that on 16th November 1966, the worker Nanjappa was not allowed to work and the work was refused by the II Party mill. That this worker fell ill from 16th November 1966 and that on 23rd November 1966, the worker submitted a medical certificate personally to the management and that further on 26th November 1966, the prescription slip given by the Doctor was also submitted to the management; that the illness of the worker continued till 15th December 1966; that on 15th December 1966 the worker presented himself at the main gate and the II Party mill to work, but he was not allowed to enter the II Party mill. That after a lapse of about 3 months on 20th June 1967 this worker was again re-employed by the II Party mill and he worked for 9 days thereafter and that after having worked for 9 days, he demanded his wages, but the II Party mill paid his wages on the daily wages basis curtailing his rights and denying the continuity of his past service. That when the worker enquired the matter, the II Party told him that he was employed as a trainee and that he had to work on daily wages basis. That thereafter, this worker demanded the II Party to consider his case, to give him benefits of continuity of service. But his services were terminated. It is prayed that he may be reinstated with back wages and D.A.

23. In the rejoinder, the management alleges that this worker was absent from 16th November 1966 to 15th December 1966 and that by a notice 15th December 1966, his name was removed from the muster roll. That this worker had resigned that this worker received that letter on 20th December 1966 and till then no complaint was made that he was denied work from 16th November 1966. That the management is not aware of his sickness and that no medical certificate or prescription slips were produced before it. It also denies that Nanjappa was employed after 3 months and that an attempt was made to curtail his rights. The management prays for the rejection of his claim. Nanjappa examined himself as W.W. 3 in this dispute. He has deposed that he could not go to the mill for about one month and that he orally asked for leave from the II Party and that he was not given leave. That after recovery, he went to the mill and in that respect he has given his evidence as follows :—

> "Then I joined duty after reporting to duty in the respondent's mill, I worked there for 3 days thereafter. Sri Obaleswamy, the Administrative Manager of the Mill told me that I had not recovered from the sickness fully and asked me to come after 15 days. As desired by Sri Obaleswamy, I returned home again and reported to duty after 15 days. After 15 days I appeared before Obaleswamy and wanted to report to duty. Then Obaleswamy told me that a notice will be sent to me and that on receipt of that notice, I should report to duty. Hence, I returned home. Thereafter, I received a notice from the management, dated 15th December 1966. It is now shown to me and marked Exhibit W-10 (produced by the union and marked by consent). I gave Exhibit W-10 to the union. It thereafter sent a reply to Exhibit W-10 ; the copy of that reply is now shown to me, which is Exhibit W-11."

He also deposed as follows :

> "As I was not keeping well and as there was nobody in my house, I could not even write a letter to the respondent for leave. Even when I was in the hospital, I could not write a letter....."

24. The evidence of Nanjappa shows that he absented himself without leave. In Exhibit W-10, it is stated that he was absent without permission. Exhibit W-1 is the reply given by the union to Exhibit W-10 and the statements by the union in Exhibit W-11 are falsified by the evidence of this worker. The stand taken by the union in the statement of demands is quite inconsistent with the

evidence given this worker before me. Further, Exhibit M-2 series, M-3, M-4 and M-5 are a series of show cause notices issued to this worker by the management from time to time, in the year 1965 for absenting himself without leave. Those documents clearly show that even previously this worker was in the habit of remaining absent without permission of the management and that he had been warned time and again by the management in that behalf. As this worker has absented himself without leave, admittedly, for over a month, the II Party management has pressed into service the provisions of the Standing Order 8(*f*) mentioned above and it has removed his name from the muster roll. I am unable to accept the statement that he rejoined duty after his sickness during the relevant period. I am unable to accept the contention of the union in that behalf. I find no reason to interfere with the decision of the management. Therefore, I hold that Nanjappa is neither entitled to reinstatement, nor to any other relief.

25. *Mumtaz* (*T.No.* 140) (*Sl. No.* 4 *in the Government scheduled list*).—In the statement of demands, the union alleges that Mumtaz has been an active member of the union, that he was in service for 4 years in the spinning department, that on 17th December 1966 when this worker presented himself at the main gate of the mills of the II Party to work, he was not allowed inside and his services were terminated. Therefore, the union prays for reinstatement of this worker with continuity of service, etc. In the rejoinder it is stated by the management that this worker Mumtaz was absent from 17th December 1966 to 3rd January 1967. That he was informed that his name had been removed from the muster rolls, the allegation that he had put in four year of service is denied. It is further alleged that the work was not refused to him by the management but this worker lost his work by reason of his absence.

26. Mumtaz has examined himself as W.W. 7. He has given evidence that the allegation of the management that he absented himself from 17th December 1966 to 3rd January 1967 is false. He has also given evidence as follows :—

> "The management asked me to dis-associate myself from the workers union. That was suggested by Sri Obaleswamy, who is now before the Court. I expressed my inability to dis-associate with the union."

In another portion of his evidence (cross-examination), has deposed as follows :—

> "I do not know the date on which Sri Obaleswamy told me not to be in the workers union. That might have been about 5 or 6 months prior to my removal. I did not report to the workers union what Mr. Obaleswamy had told me."

27. The allegation of the union is that Mumtaz has been an active member of the workers', union. If that were so, why Mumtaz had not reported the above persuasion of Obaleswamy cannot be explained. Obviously, the non-report of that material fact to the workers union by the so-called active worker of that is a strong circumstance dislodging the case of the union. Further, the alleged worker persuasion of the management has not even been pleaded in the statement of demands, nor in the letter Exhibit W-16 by the union. For the first time Mumtaz speaks of it in his evidence. The union had taken a different stand while issuing reply Exhibit W-16. It had taken a different stand in the statement of demands and Mumtaz in his evidence has taken altogether a different stand in his evidence.

28. Raju who has been examined on behalf of the management says that Mumtaz was absent during the period in question. The evidence of Raju remains undisputed in records as there is no cross-examination on that point regarding his absence. Further, Exhibit W-17, dated 3rd January 1967 is the notice issued by the management to Mumtaz in which it is stated that he absented himself from work without permission continuously from 17th December 1966 to 3rd January 1967. This is corroborated by another letter addressed by the management to the Assistant Labour Commissioner marked Exhibit W-18.

29. Exhibit M-12 series to Exhibit M-21 series are the series of show cause notices, enquiry papers and warning to Mumtaz from the year 1964 to November 1965 from time to time. Those proceedings are against Mumtaz and those proceedings are admitted by this worker. He also admits in his evidence that during the course of one year, he had absented himself for 50 days. From the records placed before me, I am satisfied that this worker is a habitual chronical absentee without permission of the management. I am also satisfied that from 17th December 1966 to 3rd January 1967 he was absent without leave. Therefore I hold that the action of the mill in invoking the provisions of the Standing Order 8(f) and removing him from the muster roll is justified. I hold that he is not entitled either for reinstatement or for any other relief.

30. *Ningappa* (*T. No.* 89) (*Sl. No. 5 in the Government Scheduled List*).—In the statement of demands, it is alleged that on 13th December 1966, the worker Ningappa presented himself the main gate of the Second Party mill to attend to work, but he was not allowed to enter the mill for the reason that this worker was taking active part in the I Party union. His reinstatement with benefits, etc., is prayed for in the statement of demands. In the rejoinder the management alleges that from 13th December 1966 to 27th December 1966 Ningappa was absent and by reason of his

absence, he was deemed to have resigned from the services; that this worker has been duly intimated about this by a registered Post and that in his letter, dated 9th February 1968, Ningappa had admitted his absence and asked for settlement of leave wages due to him and that as requested by him the amount was paid to him on 29th February 1968.

31. This worker has examined himself as W.W. 6. The management witness Raju says that this worker was absent without leave. Exhibit W-15, dated 27th December 1966 is a notice issued by the mill to Ningappa in which it is stated that Ningappa absented himself without permission continuously from 13th December 1966 to 27th December 1966 and that his name had been removed from the muster roll under the Standing Order 8(f) Exhibit M-11 is the postal acknowledgement of Ningappa having received that notice as per his own evidence. No reply has been sent to that notice by the mill from the worker. From the records, I am satisfied that Ningappa was absent during the relevant period and the action of the management in removing his name from the muster roll under the Standing Orders is justified. Therefore, I hold that he is not not entitled either to reinstatement or to any other relief.

32. *Worker Narasimhamurthy (T. No. 292 Spinning Dept.) (Sl. No. 8 in the Government scheduled list).*—In the statement of demands, the union has alleged that Narasimhamurthy applied for 2 days leave from 25th July 1966 and that after the expiry of his leave, he presented to duty but he was not allowed to enter the mill and his services were terminated. Reinstatement, etc., is demanded by the union. In the rejoinder, the management denies that Narasimhamurthy applied for leave as alleged and states that the worker was absent from 25th July 1966 and by an order dated 18th August 1966 his name was removed from the register.

33. This worker has not examined himself. But the witness Basavaraj, W.W. 5 has given evidence regarding the claim of this worker. I had the privilege of observing this witness when he was giving evidence in this dispute. From the demeanour of this witness, I am inclined to feel that there is a touch of artificiality in his evidence, particularly in relation to the evidence given in respect of Narasimhamurthy. Why Narasimhamurthy has not examined himself, no reason is given though he was available at the time of the evidence. From the records, I am satisfied that he was absent without leave and that the action of the management is justified. I have no reason to interfere with the decision of the management. I hold he is neither entitled to reinstatement, nor to any other relief.

34. *Hanumantappa (T. No. 200 Reeling Dept.) (Sl. No. 11 of the Government Scheduled List).*—In the statement of demands, it is alleged that on 22nd February 1966, the worker Hanumanthappa presented himself at the main gate of the mills, but he was not allowed inside the mill and his services were terminated, on the false allegation of unjust absence. It is prayed for his reinstatement with benefits, etc. In the rejoinder, it is alleged that this worker was absent for 39 days continuously from 10th April 1965, that a show cause notice was served upon him on 27th May 1965, asking him to explain why action should not be taken against him; that his absence was proved in an enquiry held in that regard and this worker was dismissed from service. It is further alleged that this worker had settled his accounts after his dismissal.

35. This worker has not examined himself. The evidence of Kallappa will show that he has not given evidence that will help the worker Hanumantappa to get an order of reinstatement. The evidence of Kallappa regarding the material points in issue, *viz.*, absence is in the nature of a second hand evidence. I am not prepared to accept the evidence of Kallappa regarding the claims of Hanumanthappa.

36. Raju, the management witness has given his evidence that Hanumanthappa was absent in April and May 1965, that a show cause notice was issued dated 27th May 1965 as per Exhibit M-43 and that Hanumanthappa had sent a reply to that notice as per Exhibit M-44 admitting his absence. His evidence also shows that the management had conducted an enquiry as per the enquiry papers Exhibit M-45. In the domestic enquiry he has admitted that he was absent continuously for 39 days. Therefore, the management had dismissed him from service as per Exhibit M-46 A. When the witness has admitted that he was absent, the management was perfectly justified in dismissing him from service and I have no judicial justification to interfere with the decision, in the absence of anything to the contrary. The evidence of Raju to the effect that Hanumanthappa was absent for 39 days and that there was a show cause notice, a reply thereto and a subsequent enquiry and the admission of these relevant matters remain unchallenged in the records as there is no cross-examination. I am satisfied that the decision of the management is justified. I hold that this worker is not entitled to reinstatement or to any other relief.

37. *D. Kallappa (Sl. No. 13 in the Government Scheduled list).*—It is alleged in the statement of demands that the worker Kallappa requested the II Party mill after working in this mills for 2 years, to give him permanent ticket as he had completed the probationary period. His request was refused and his services

were terminated. The union prays for reinstatement with benefits, etc. In the rejoinder, it is stated that this worker was an apprentice, that he joined on 8th October 1964 and he stopped of his own accord from 5th November 1964. That the allegation that he had 2 years of service, and that he was stopped by the management is denied. Since this worker had not even served for one year, no notice was served upon him. It prays for the rejection of his claims.

38. Kallappa examined himself as W.W. 4. In his evidence he says that he had joined the II Party mill and worked for 3 or 4 years, that after the expiry of that period, he was neither made permanent nor gave him a temporary card, that he requested the manager to issue a temporary card. That as he demanded a temporary card, he was removed from service. He denies the allegation in his evidence that he worked for less than a month a alleged by the management.

39. Raju, on behalf of the management has deposed that Kallappa was a trainee in the mill and that the trainees register marked Exhibit M-48 at page 127 shows that Kallappa was absent from 7th December 1964 to 31st December 1964 and that relevant entry is marked Exhibit M-48 A. He has also deposed that as Kallappa was continuously absent his name was struck from muster roll.

40. The trainees register Exhibit M-48 is for the period from March 1964 to March 1965. A perusal of that book will show that his name does not find a place anywhere in that register except in the month of August 1964, which is at page 127 at Sl. No. 1 and that shows he was absent continuously from 7th December 1964 to the end of the month. There is no cross-examination on behalf of Kallappa. Therefore, the evidence of Raju remains undisputed in the records. So from Exhibit M-48 A it is evident that this Kallappa absented himself for more than 7 days and therefore falls within the mischief of Standing Order 8(f). The decision of the management in removing him appears to be justified. I hold that Kallappa is not entitled to reinstatement or any other relief.

41. *B. Basavaraj (Sl. No. 16 of Government Scheduled list).*— This worker has put in three years service. In the statement of demands, it is alleged that on 12th December 1966 when he went to the main gate of the mills to report to duty, he was not allowed to enter inside and that the work has been refused for the reason that he was taking active part in the activities of the I Party union. Therefore, his reinstatement is prayed for with continuity of service, benefits, etc. In the rejoinder, the allegation that he has

put in three service is denied, and that the management was never aware of the activities of this worker. That he was absent from 12th December 1966 and therefore his name was removed from the register. That the worker was intimated of this by an order dated 28th December 1966. That there was no protest after the receipt of the order until the dispute was taken up before the conciliation officer. The rejection of the claim is prayed.

42. Basavaraj has examined himself as W.W. 5. He states in his evidence that he was not absent. Raju, who has been examined by the management, has given evidence that Basavaraj was a temporary worker and that in the register for workers, Exhibit M-26, Basavaraj was absent from 12th December 1966 to 28th December 1966 at page 121 of that book, the relevant entry being Exhibit M-26 B and that a notice dated 28th December 1966 was issued to him as per Exhibit M-49 and the same has been acknowledged by Basavaraj as per the acknowledgment Exhibit M-49 A. The evidence of this witness remains un-challenged, as there is no cross-examination.

43. Exhibit M-26 B which is at page Exhibit M-26 shows that Basavaraj was absent continuously from 12th December 1966 to 28th December 1966 and the name of Basavaraj is shown in that page. In the notice Exhibit M-49 it is stated by the management that he was continuously absent without permission during that period. This worker has received it as per Exhibit M-49 A on 28th December 1966. But he has not chosen to reply. Basavaraj has given evidence that he is member of the First Party union from about 1964 and that he has been participating in this union. If really, he was victimised as could be made out from his evidence, nothing prevented him from giving notice to that effect to the management or to have sent a notice to the mill through his union. That has not been done. His not sending a reply to Exhibit M-49 is a circumstance that goes against him. And in the absence of anything contrary to the documentary evidence, I am inclined to accept that he was absent for a number of days continuously in the manner alleged by the management. It has pressed into service the provisions of the Standing Order 8(f) and the decision of the management appears to be justified. Therefore, I hold that this worker is not entitled to reinstatement or any other relief.

44. *Mohamad Ameer* (*T. No. 374, pinning Depatrment*) (*Sl. No. 16 of the Government Scheduled list*).—According to the union, he was working in the mills in question for the past about 4 years. That on 10th November 1966 he went to the mills, but the watchman of the II Party mill did not allow him to enter into the premises of the mill. That subsequently, show cause notice was

sent to this worker regarding his unauthorised absence. An explanation was sent to that show cause notice but he was terminated from service. His reinstatement with back wages is prayed for. In the rejoinder it is alleged that the allegation that Mohamed Ameer worked for 4 years is denied. It has denied that absence was forced upon him. That this worker was a chronical absentee and he was absent from 11th June 1966 and his name was removed from the muster roll. A show cause notice was served upon the worker nor did he furnish any explanation. Mohamad Ameer has examined himself as W.W. 8 and he has given evidence as follows:

> "Two years ago on a day when I was working during day shift in the spinning section, the Supervisor Jagannath took me to the Reeling department of the mill telling me that I should work in the Reeling department and not in the spinning department. Thereafter, I expressed my desire to work only in the spinning department. By that time, the shift time was over and I came to the Mill. On the next day when I went to duty to report to duty the Time-keeper Srinivasan told me that he was not going to allow me in the premises of the mill. I did not enter the premises. On the next day after returning home, I came to the Mill when I was asked to see the manager. I was not allowed to see the manager. Hanumantappa and I were not allowed. This sort of things was going for 15 days and thereafter, I related the same to the union of which I am a member. The union sent notice to the management as per notice dated 30th November 1966, which is now shown to me and marked Exhibit M-19."

45. The evidence of Raju on behalf of the management shows that he was absent in the 1966 for 47 days, and that the management has sent a notice to Mohamad Ameer as per Exhibit M-50, which has been acknowledged by him as per Exhibit M-25. Exhibit M-50 is the copy of the notice sent by the management to Mohamad Ameer. It is dated 24th November 1966. It shows that Mahamad Ameer absented continuously from 7th November 1966 and that as per the Standing Order 8(f) his name was removed from the muster rolls and a report to that effect has also been sent as per Exhibit M-51 to the Assistant Labour Commissioner, Mysore and that letter addressed to the Assistant Labour Commissioner is dated 5th January 1967.

46. From the evidence of Mohamad Ameer, it will be seen that he has taken a stand in his evidence, which is entirely different from the one taken in the statement of demands by the union. I am

unable to accept the oral evidence of Mohamad Ameer. The documentary evidence produced by the management remains unchallenged in the records, and no reply to Exhibit M-50 has been sent by this worker.

47. Further Exhibit M-23 dated 20th August 1967 and Exhibit M-24, dated 6th August 1965 and the other papers, which bear the signature of this worker show that he had previously absented himself without permission and he was warned by the management. I am convinced that he was absent for more than 7 days and the action of the management in invoking the provisions of the Standing Order 8(f) seems to be justified. I hold that he is not entitled to reinstatement or any other relief. For the foregoing reasons, I pass the following award :

AWARD

48. Since the worker Rajappa, whose name is at Sl. No. 12 in the Government Schedule list is stated to have been reinstated without back wages as per the statement of the management, dated 18th November 1968, I allow the claim of this claimant Rajappa without back wages. I reject the claims of Nagaraj and P. M. Mahadevappa, Sl. Nos. 6 and 7 in the Government Schedule list as their claims have not been pressed by the I Party union as stated by it on 30th October 1968. Regarding the other claims, I reject their claims on merits. Under the circumstances of this case I direct each party to bear its own costs.

49. I further direct the office of this Court to submit true copies of this award to the Secretary to Government of Mysore, Food, Civil Supplies and Labour Department, Mysore Government Secretariat, Vidhana Soudha, Bangalore 1 as required under section 15 of the I.D. Act.

50. Dictated to the Stenographer, transcribed and typed by him and then pronounced by me in the Open Court this 3rd day of December, 1968 at Hubli.

(Sd.) D. PONNURANGAM,

Presiding Officer,
Labour Court, Hubli.

3–12–68

SCHEDULE

Sl. No.	Names	Ticket No.	Department	Service	Date on which the work was refused	Terminated on
1	A. Wazeer	Trainee			8-2-67	
2	L. R. Prakash	12	A and B		8-2-67	16-2-66
3	Nanjappa	17	Carding		15-12-66	17-1266
4	Mumtaz	140	Spinning		8-2-67	2-1-66
5	Ningappa	89		4 years	12-12-66	27-12-66
6	Nagaraja	Clerk	Reeling		31-12-66	2-1-67
7	P.M. Mahadevappa	317	Reeling			
8	Narasimhamurthy	29	Spinning		28-7-66	18-8-66
9	K. Jayappa	97	Spinning			
10	Devaraja	103	Spinning			
11	Hanumanthappa	200	Reeling			
12	Rajappa	Trainee				22-3-66
13	D. Kallappa					
14	B. Basavaraja	84	Spinning			
15	R. Rajappa	16	Carding			1-11-65
16	MD. Ameer	374	Spinning		10-11-66	

D. PONNURANGAM,

Presiding Officer,
Labour Court, Hubli.

3-12-68

"True Copy"